

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs'

(COM(2002) 139 final — 2002/0066 (CNS))

(2002/C 241/10)

On 15 April 2002 the Council decided to consult the Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 June 2002. The rapporteur was Mr de las Heras Cabañas.

At its 392nd Plenary Session (meeting of 17 July 2002) the Economic and Social Committee adopted the following opinion with 124 votes in favour, no dissenting votes and three abstentions.

1. The Commission proposal

1.1. The Commission proposes to amend Regulation (EEC) No 2081/92 in order to provide better protection for geographical indications and designations of origin and ensure compliance with binding bilateral and multilateral agreements that transcend EU borders.

1.2. The proposed amendments are as follows:

1.2.1. The regulation's current sphere of application is to be extended to include wine vinegar, while mineral and spring waters are to be excluded (Annex II).

1.2.2. Clarifications are to be provided regarding the registration of names with identical spelling or pronunciation (i.e. homonyms).

1.2.3. The Commission proposes to extend the right to object to a registration to all nationals of WTO member countries who have a legitimate concern and rights within the EU. Article 7 of the current regulation grants this right to EU citizens only. The TRIPS Agreement on trade-related intellectual property rights, adopted by WTO member countries in 1994, contains specific provisions on geographical indications, whereby WTO members are to ensure that this protection does not cause distortions of trade.

1.2.4. The Commission also proposes to allow the holder of a protected designation of origin (PDO) or protected geographical indication (PGI) to cancel the registration if there are good grounds for doing so.

1.2.5. Article 12 of the current regulation allows the registration of products originating in third countries. A special procedure will be provided for the registration of such products on the Community market, while the third countries concerned are asked to introduce the EU designation of origin system on their territory on a reciprocal basis.

1.2.6. In cases of conflict between a trademark and a geographical indication, the solution adopted by the regulation will apply not only to registered trademarks but also to trademark rights acquired through use. In these cases too, the reference date will be the date of submission of the application for PGI/PDO registration, this being the date already used in the case of registered trademarks.

1.2.7. Article 17 of the regulation provided for a simplified procedure. This article is to be deleted.

2. General comments

2.1. Since the adoption of the original Regulation No 2081/92, the Committee's opinions on this subject have championed the development of policies to consolidate at EU level the production and protection of high-quality agricultural products and foodstuffs. It is important that the value of these products should be recognised, and that production of them should have an impact on rural society as a whole, helping to keep up local customs, tradition and cultures which, while acting as a storehouse for the special skills of a huge range of EU rural areas, can also draw on the benefits of technological progress.

2.2. The Committee's stance and its earlier work in this field are reflected in its Own-initiative Opinion on the Promotion of local speciality agricultural products as a development instrument under the new CAP⁽¹⁾. More recently, in its Opinion on The future of the CAP⁽²⁾, the Committee stressed the need for European agriculture to focus on safe, high-quality production. Protected geographical indications and designations of origin guarantee these two basic characteristics.

2.3. High-quality local speciality products still form a limited percentage of EU agricultural production. This percentage should be increased so that these products acquire a significant market share, thereby furthering the economic development of the most disadvantaged rural areas. Differentiating agricultural products and foodstuffs by protecting their name and laying down production rules for them is an important tool for adding value, especially when quality is itself viewed as a market strategy. These aims must continue to be pursued within the context of CAP measures.

2.4. Although PGI/PDO products come from a wide variety of regions, quality products with specific characteristics are mainly produced in disadvantaged, outlying and upland areas. By virtue of their intrinsic character and production methods, traditional products can play a key role in the development and promotion of rural society. They:

- help to keep the local population in place and create jobs, especially in disadvantaged areas;
- promote balanced use of existing resources;
- in more general terms, thanks to their methods of production, conserve and improve the natural environment;
- respect existing ecosystems, biodiversity and the gene pool by using local varieties and breeds;
- represent the culture and tradition of an area or region.

(1) CES 972/98, OJ C 284 of 14.9.1998, page 62, rapporteur: Ms Santiago.

(2) CES 362/2002, rapporteur: Mr Ribbe.

2.5. Protection of product names has encouraged producers to undertake voluntarily to meet specific production standards which they themselves help to set and which cover all stages of the food-production chain. The traceability of these products receives meticulous attention; this not only ensures compliance with the food-safety requirements which apply in all spheres of production but also underpins the added value resulting from the product's recognised specific quality and origin

2.6. Regulation No 2081/92 should explicitly enshrine the right of PDO/PGI holders to require protected products to be packaged within the area of production, if they so wish, with a view to guaranteeing checks on quality. The term packaging here refers to the operations needed to prepare the product for sale, e.g. bottling or canning.

2.7. The Committee supports the tightening-up of PDO and PGI systems as an effective way of protecting the rights of the consumer and meeting the consumer's legitimate wish for safe, high-quality food. Technically speaking, a protected designation of origin is granted when there is a firm, proven link between product quality and the inherent natural and human factors in its region of origin, while a protected geographical indication is granted when a product possesses a specific reputation or characteristics which are attributable to its geographical origin. Labelling a product with the protected designation and numbered certification mark guarantees that it has been checked at all stages of the production chain and can be traced back to its origin.

2.8. Any quality guarantee ensures that a product is well received on the markets. This leads to a host of imitations that seek to exploit the prestige which a particular geographical designation confers. Action must be taken to stamp out fraudulent use of a designation by products that do not come from the protected geographical area. The Committee calls on the Commission and Council to tighten up monitoring provisions, with a view to ensuring that all Member States effectively monitor the protection granted under the regulation. By the same token, the regulation should protect PDO/PGI by explicitly banning the export from the EU to third countries, of products — or imitation products — which wrongfully use a PDO or PGI.

2.8.1. Holders of a designation must strive to ensure that their products meet the relevant standards. At the marketing stage, steps must be taken to safeguard traceability and to ensure that the information given to the consumer is accurate. Furthermore, given that the aim of PGI and PDO is to promote quality, the Member States and the Commission must ensure that they continue to meet the criteria required for their recognition, registration and protection. PDO and PGI are based on the specific nature of the product, region or production and/or processing system. The Committee thinks that due rigour must continue to be exercised before granting a PDO or PGI, so as to avoid abuses which undermine the supposed distinctive characteristics of the product.

2.8.2. Turning to the relation between trademarks and PGI/PDO, at both Community and international level, the Committee considers that although priority must be given to the general and public interest represented by PGI/PDO, both forms of intellectual property deserve proper protection as they both provide a means of addressing such issues as unfair competition or misleading advertising.

2.9. The rapid rise of market liberalisation and agricultural policies which encourage mass production make it all the more necessary to differentiate and diversify supply. The exclusive nature of distinctive products which stand out from others of a similar nature should offer them a certain stability. Revision of the current regulation is necessary by virtue of the TRIPS agreement.

2.10. Rules are needed to allow the inclusion of quality products without losing their exclusivity. International protection is currently below European standards. The Committee opposes 'globalisation' without proper rules to protect quality products which are important for the development of very specific rural areas. The Committee therefore calls on the Commission to devise an aggressive strategy to improve protection of PDO and PGI under the TRIPS agreements so that the level of protection and requirements are on a par with those that apply within the Community market.

2.11. It is important that an increasing number of products should benefit from protection outside their country of origin, in the certainty that their added value and distinctive quality status will continue to be guaranteed. The addition of new

types of product (e.g. oils, honey, flowers and ornamental plants, cork) in recent years bears witness to producers' growing concern to protect product names.

2.12. With a view to extending the number of traditional products eligible for these protection measures and thereby encouraging the development of a larger number of rural areas, the Committee considers that Annex II of Regulation No 2081/92 could easily be extended to other agricultural products.

2.13. At the same time the Committee would highlight the possibility of providing a legal framework to protect non-agricultural craft products with special characteristics linked to a particular geographical area.

3. Specific comments

Scope of protection

3.1. Council Regulation (EEC) No 823/87⁽¹⁾ laying down special provisions relating to quality wines produced in specific regions does not cover wine vinegar. There have been designations of origin for quality vinegars for some time, but hitherto they have not been protected at Community level and processors have not had many possibilities for promoting their product. The inclusion of wine vinegar in the PDO/PGI register will help to develop this market and will benefit all the sectors concerned, from producers to consumers.

3.2. The purpose of the regulation is to lay down rules for the registration and monitoring of PDO and PGI for agricultural products and foodstuffs, so as to guarantee their protection. It is logical that mineral and spring waters should be excluded as they are a different type of product. Also bearing in mind the problems which have already arisen in the registration of these designations under Regulation No 2081/92, the Committee considers that the Commission is right to exclude mineral and spring waters from the register of agricultural products and foodstuffs.

3.2.1. Council Directive 80/777/EEC of 15 July 1980⁽²⁾ concerns the approximation of the laws of the Member States relating to exploitation and marketing of natural mineral waters. Although the directive does not specifically protect

⁽¹⁾ OJ L 84 of 27.3.1987.

⁽²⁾ OJ L 229 of 30.8.1980.

geographical designations of waters, the Committee agrees that this is an appropriate instrument for regulating the use of such designations for mineral and spring waters.

3.3. The Committee would like to mention some further agricultural products and foodstuffs, other agriculture-based products and fisheries products whose specific characteristics and origin are linked to a particular geographical region and which could therefore be brought under the present regulation. The Committee would propose the following products: wool, wicker, mustard and pasta.

The international situation

3.4. As already noted, the TRIPS agreements lay down the procedures which members must follow to prevent the fraudulent use of a geographical indication (Article 22), and to resolve conflicts between trademarks and PGI. All members are entitled to object to the registration of a designation if it can be shown to be prejudicial to the interests of the nationals of the requesting country.

3.5. Given the possibility that a third country could instigate the panel procedure against the EU for failure to comply with the TRIPS agreements, the Committee supports the amendments proposed by the Commission as a way of protecting EU designations at world level. This will make it possible for all members to object to a registration and will also help avoid conflicts.

3.6. However, the Committee thinks that rigorous checks and a careful examination must be conducted before an objection is accepted. A geographical indication must only be excluded from the register if the allegations are duly substantiated. At all events, the justification can only be based on the situation within the Community market of the party raising the objection.

3.7. The growing trade in products with designations of origin means that they are increasingly being traded with third countries. Community designations of origin must enjoy the same protection outside the EU as they do within it. A policy of reciprocity is a logical step, with the possibility of allowing

third-country products to be registered on the Community market if this means equal protection for EU products in those countries. Third countries which wish their product names to be protected on the Community market must first show that their evaluation, objection and monitoring system is equivalent to the Community system.

3.8. The Committee stresses that ensuring that protection standards for third-country PDO/PGI products are as rigorous as those for EU products will prevent unfair competition and price dumping on the quality products market. By the same token, protection of the EU's PDO/PGI on third-country markets must prevent unfair competition from imitation or counterfeit products; the relevant third countries must ensure adequate checking mechanisms.

Guarantee of differentiation between designations

3.9. Much of the added value of PDO/PGI products derives from their exclusivity, together with the intrinsic quality derived from the special way they are produced.

3.10. The name conferred by a geographical indication, and the protection of that name by virtue of the quality of the products concerned, underpins their identification as exclusive products of a particular region that can only be obtained under those conditions and by means of the traditional local practices mentioned.

3.11. Protection of the exclusive nature of a designation guarantees recognition of its quality in all spheres. The Committee considers that homonyms between PGI and trade marks, whether registered or not, should as a general rule be avoided.

3.12. The rules must ensure that any conflicts which arise between PGI and trade marks are dealt with rigorously, although the Committee thinks that fair treatment is needed in the case of conflicts between PDO/PGI and existing trademarks (whether the latter are registered or acquired through use) if they do not give rise to geographical confusion.

3.13. The addition of trademarks acquired through use ensures wider protection against possible unfair competition on the quality products market. However it also allows the co-existence of a trademark acquired through use and a PGI in justified cases. This will penalise PGI as there is a possibility — even if minimal — that consumers will be misled; such a situation must be avoided.

3.14. The alteration of the reference dates used to resolve these conflicts will make it possible to be more restrictive about allowing the co-existence of a trade mark and PGI that share the same name. The Committee therefore supports the Commission's proposal that the reference date should be the date on which an application for PDO/PGI registration was submitted, and not the date of the notice conferring the right to object. This is in line with existing practice for registered trademarks.

3.15. The Committee also endorses the proposal to tighten up the requirements for the registration of two names that are homonyms, with the aim of keeping each name as exclusive as possible and avoiding confusion or the downgrading of quality product recognition.

3.16. The use of the simplified procedure for registering existing names gave rise to various problems, and Regulation No 2081/92 has now been in force for a number of years, giving people time to adapt (only one product — a cheese — has yet to receive its designation). For these reasons, and bearing in mind that the simplified procedure does not include the right to object which is required under the TRIPS agreement, the Committee approves the proposal to delete Article 17 of the regulation. This provision was intended as a transitional measure to ensure rapid harmonisation of the national registration systems of each Member State. Nevertheless, the Committee thinks that PDO/PGI registration procedures which have already been launched under Article 17 should be concluded normally.

4. Conclusions

4.1. The Committee broadly supports the Commission's proposed amendments to Regulation No 2081/92.

4.2. As explained in points 2.8 and 2.9 above, the Committee urges the Commission and Council to increase the protection of PGO/PDI in the WTO. Compliance with international agreements on protection for quality products must be tied in with the requirements which Member States wish to safeguard, without losing sight of the real beneficiaries of these designations and their social importance for the development of the Community's rural areas. The aim in international negotiations must be to secure effective application of the multilateral notification and registration system which has already been agreed for wines and spirits, and to extend the protection which the TRIPS agreement currently accords to wines and spirits (including the multilateral registration mechanism) so that it covers all agricultural products and foodstuffs.

4.3. The Committee reiterates the need to improve monitoring provisions, so that all Member States effectively exert PDO/PGI protection under Regulation No 2081/92.

4.3.1. The protection of a larger number of products should be encouraged, although this must not lead to an unjustified proliferation of PDO and PGI for products which do not precisely meet the required tenets (i.e. typical, specific characteristics), as that would undermine the standing of protected products in general.

4.4. Lastly, the Committee highlights the importance of promoting PDO/PGI products. Alongside quality policies, promotion policies should also be stepped up, with the focus on communication and information for the consumer, so as to protect the consumer's right to opt for the specific qualities of a product made using traditional methods that have been meticulously conserved and adapted by producers and processors in a particular geographical region.

Brussels, 17 July 2002.

The President
of the Economic and Social Committee
Göke FRERICHS